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J.D. Mosher

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-191246**

**DATE: April 13, 1978**

**MATTER OF: Mr. Leroy R. O'Brien**

**DIGEST:** Where Government records necessary to either justify or refute a claim have been destroyed pursuant to law, or become unavailable due to the lapse of time, and there is no other documentation available from any source to establish the liability of the United States, this Office has no alternative but to sustain the Claims Division's disallowance of the claim.

This action is in response to a letter from Mr. Leroy R. O'Brien, which constitutes an appeal from a settlement by the Claims Division of this Office dated February 20, 1976, which disallowed his claim for family allowance believed due him for the period April 19, 1944, through February 18, 1946, incident to his military service with the U.S. Army.

The record shows that the member first made inquiry about this matter on February 28, 1946. A subsequent inquiry was received in the General Accounting Office and acknowledged on April 4, 1952. A copy of a letter dated May 7, 1953, addressed to the claimant and submitted by the claimant as an enclosure to his most recent inquiry, indicates that he was requested by the Retained Accounts Division, U.S. Army Finance Center, St. Louis, Missouri, to complete FCUSA Form 3-137 stating thereon the exact nature of his claim and the period involved. There is nothing in the file to indicate that the information requested was ever supplied. Further inquiry by the member about his claim apparently did not occur until 10 years later on November 20, 1963. The next correspondence in the file is a copy of a letter from the Army to Senator Talmadge dated August 19, 1975, indicating that the Senator had written on behalf of the claimant regarding his claim.

The Servicemen's Dependents Allowance Act of 1942, 56 Stat. 381, 37 U.S.C. 201 et seq. (1940, Supp. II) provided wartime allowances to servicemen's dependents. However, in order to be eligible for such allowances written application had to be made

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by the member. Thereafter the member was required to make a contribution from his monthly pay which was matched by the Government.

While it appears that the claimant made inquiry about the family allowance with his initial inquiry in 1946 before his claim was barred by the act of October 9, 1940, 31 U.S.C. 71a, proof of whether or not his inquiry was ever acted upon and whether or not he ever qualified for the family allowance is not available from Government records.

Records for the period in question have been destroyed pursuant to law relating to disposal of records (see chapter 33 of title 44, United States Code, and title 41, Code of Federal Regulations, chapter 101, Part 101-11 - Records Management). Therefore, since it cannot be determined whether the information requested of the claimant on May 7, 1953, to establish his claim was ever submitted and if submitted whether it was ever acted upon, this Office is unable to justify or refute the member's claim for such family allowance.

Paragraph 10.1, title 4 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies provides as follows:

"Claims are settled on the basis of the facts as established by the Government agency concerned and by evidence submitted by the claimant. Settlements are founded on a determination of the legal liability of the United States under the factual situation involved as established by the written record. The burden is on the claimants to establish the liability of the United States, and the claimants' right to payment. The settlement of claims is based upon the written record only."

While the burden of proof as to the validity of a claim against the United States, generally, is on the person asserting such claim, information as to its existence is usually found in records maintained by the Government. However, it has been long established that where, as in the present case, the records necessary to justify or refute a claim have been destroyed

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pursuant to law, the accounting officers of the Government may not give the matter favorable consideration where the claimant has failed to act thereon for a long period of years. Thus, in cases where there is insufficient information given by a claimant to identify and establish a claim, there is no further action that this Office can take in the matter. See B-187523, November 9, 1976.

Accordingly, the action taken by our Claims Division in this matter is sustained.

Deputy

  
Comptroller General  
of the United States